

EXHIBIT 3

To

**[Second] Declaration of S. Wertheim in support of Plaintiff's in Support of Its
Motion for Attorneys' Fees and Costs**



American Intellectual Property Law Association

Report of the Economic Survey 2021

Prepared Under Direction of the
American Intellectual Property Law Association
Law Practice Management Committee

Arlene Neal, Chair

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Prepared by:



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AIPLA Law Practice Management 2021 Economic Survey Participants

**We would like to thank those who helped put together and review
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INTRODUCTION

The AIPLA Economic Survey, developed and directed by the Law Practice Management Committee of the American Intellectual Property Law Association (AIPLA), reports the annual incomes and related professional and demographic characteristics of intellectual property (IP) law attorneys and associated patent agents. Conducted every other year by AIPLA, this survey also examines the economic aspects of intellectual property law practice, including individual billing rates and typical charges for representative IP law services. All U.S. AIPLA members, with the exception of student members were invited to participate.

The Law Practice Management Committee took an active role in reviewing the Economic Survey with a goal of improving the usefulness and value of the data that are collected and analyzed.

DATA COLLECTION

An e-mail invitation to participate in the 2021 AIPLA Economic Survey was sent to 7,220 AIPLA members; accounting for bounces and requests to be removed from the database, the actual sample surveyed was 6,833. The e-mail included an individualized direct link to the Web-based questionnaire along with an attached letter requesting additional participation in the Firm portion of the Economic Survey. The initial e-mail was followed up by several e-mail reminders. Additionally, AIPLA sent out promotional emails with survey links as well. Similar to past years, additional efforts were made to collect the Firm Survey data. Contact information was collected directly from the Individual Survey respondents that was then used for distributing Firm Survey links directly to the appropriate people identified at each firm by the Individual Survey respondents.

A total of 740 individuals responded by completing some or all of the Individual questionnaire, yielding a 10.8% response rate, nearly the same rate as in 2019. Additional efforts to gather data for the Firm portion of the survey garnered 165 responses – slightly higher than the 160 received in 2019.

All data submitted by respondents were reviewed and evaluated for reasonableness and consistency; data anomalies and outliers were analyzed and corrected or deleted.

In many cases, respondents did not answer every question, so the total counts for each table may vary.

CHANGES TO THE SURVEY

A number of enhancements were made to the **Individual Survey** instrument this year, including the addition of a few questions regarding the COVID-19 pandemic.

In Part I, questions about COVID-19 were added, expanding the questions about remote working. Additionally, respondents were given the option of *Prefer not to respond* for the gender and ethnicity questions. Lastly, two questions regarding familiarity with the Global Dossier were removed this year.

Part III (Private Practitioners) added two new questions about COVID-19 and billing rate changes and removed questions added in 2019 that requested data that is already collected on the Firm Survey.

The category of *Filing US Applications Abroad* that was added in 2019 in Part IV was revised so that respondents no longer were asked to indicate the top 3 countries for US applications entering foreign national phase or for US applications directly filed with foreign office. They were still asked, however, to choose one foreign country and answer all questions in that section based on that one foreign country. Another question was added in this section for respondents to indicate if there is a surcharge to clients for handling invoices from foreign counsel.

The reference to Covered Business Method (CBM) Review was removed when respondents were asked to estimate the total cost of filing or defending a petition for a post-grant proceeding. It was replaced with the category of PGR/IPR – Life Sciences. The other two categories (PGR/IPR – Electrical/Computer and PGR/IPR – Mechanical) remained the same.

Litigation – Trademark Opposition/Cancellation was updated from two categories (End of Discovery and Inclusive, all costs) to three categories (Through filing petition, Through end of discovery, and Inclusive, all costs).

The **2021 Firm Survey** instrument added new questions related to the COVID-19 pandemic. More specifically, there were questions about closing or reducing office space and remote working before, during, and after the pandemic. COVID-19 related questions associated with the summer associates' programs were also added. A new question about outsourcing services was included to replace two previous questions about outsourcing international filing and annuity payments. A new question requesting the percent change in the firm's revenue for IP legal services from 2019 to 2020 was also added. At the same time a number of questions were removed this year, including numerous detailed questions regarding support staff (billable and non-billable). Docketing and accounting system questions were removed as well as the section collecting the same charges data that is collected on the Individual Survey.

DESCRIPTION OF STATISTICS AND FORMATTING CONVENTIONS

A minimum of three responses is required to show composite values. The term "ISD" is used to show **insufficient data**. Similar to the past few reports, table rows with one or two respondents have been omitted to protect the anonymity of respondents, and tables with no valid rows have likewise been omitted. In general, tables with less than 20 respondents overall were not shown in order to maintain statistical reliability of the data; however, exceptions were made, and some tables were included despite having fewer than 20 respondents overall. Location tables that display data for typical charges and litigation related matters were deleted when there were less than 20 respondents. The corresponding charges and litigation tables with data displayed by number of attorneys were kept. Additionally, for applicable tables, the 10th and 90th percentiles could only be shown if there were 10 or more respondents.

Quartiles: Quartiles are used to show distributions of real numbers. Responses are described by three quartiles: the first quartile, the median, and the third quartile. Quartiles identify interpolated locations on a distribution of values and do not necessarily represent actual reported values. Another label for quartiles is percentiles; the first quartile is the same as the 25th percentile, the median is the 50th percentile, and the third quartile is the 75th percentile. For example, when all reported values are listed from highest to lowest, the third quartile identifies the point on the list that is equal to or greater than 75 percent (three-quarters) of the reported values and the first quartile identifies the point on the list that is equal to or less than 25 percent (one-quarter).

10th Percentile: Also used to show distributions of real numbers, ninety percent of respondents reported this amount or more.

90th Percentile: Ten percent reported this amount or more. If there are fewer than 10 values, the 90th percentile cannot be calculated.

Median (midpoint): The median identifies the point in the distribution of reported values that is equal to or larger than one-half of reported values and equal to or smaller than one-half—that is, the mid-point. A median is shown when three or more values were reported by respondents. The first and third quartiles are shown when four or more values were reported by respondents. Quartiles and medians based on values reported by survey respondents are estimates of the quartiles and medians that could be determined if the

characteristics of the entire population represented by survey respondents were known. In general, the more values that are reported, the more accurately quartiles estimate the distribution of values among all AIPLA members.

Mean (average): The mean is shown when three or more values were reported by respondents. It is equal to the sum of all values divided by the number of values.

It should be noted that if the mean exceeds the median, it is because high values affect the calculations. It is also possible, especially with a small number of values, for the mean to exceed the third quartile.

Percentages in some tables and graphs may not sum exactly due to rounding.

Other definitions useful in understanding tabular information presented in this report are:

Income: Defined as *"total gross income in calendar year 2020 from your primary practice...including any partnership income, cash bonus, share of profits, and similar income you received, and any deferred compensation in which you vested in 2020."*

Typical Charges: Respondents were instructed to respond *"only if you have been personally responsible for a representative sample of the type of work to which the question pertains, either as a service provider (i.e., an attorney in private practice) or as a purchaser of such services (i.e., corporate counsel)."* When reporting, respondents were directed to assume *"a typical case with no unusual complications,"* and were asked *"what did you charge (or would have charged, e.g., based on a fixed fee rate schedule) or what were you charged (or would have expected to be charged, e.g., based on a fixed fee rate schedule), in 2020, for legal services only (including search fees, but not including copy costs, drawing fees or government fees) in each of the following types of US matters?"* Respondents were also asked to indicate the type of fee primarily used in 2020 (i.e., fixed fee, hourly, other).

Estimated Litigation Costs: Respondents were instructed to respond to these questions *"only if you have personal knowledge either as a service provider (attorney in private practice) or as a purchaser of such services (corporate counsel) of the costs incurred within the relatively recent past, for the type of work to which the question pertains. In each of the questions, 'total cost' is all costs, including outside legal and paralegal services, local counsel, associates, paralegals, travel and living expenses, fees and costs for court reporters, photocopies, courier services, exhibit preparation, analytical testing, expert witnesses, translators, surveys, jury advisors, and similar expenses."* Respondents were further instructed to estimate these based on a single IP asset, such as one patent at issue or one trademark, etc.

Location: The metropolitan areas of Boston, New York City, Philadelphia, Washington (DC-MD-VA), Chicago, and Minneapolis-St. Paul include all localities—central city and surrounding areas—within the primary metropolitan statistical area. Texas is the one state reported separately. There were sufficient responses to breakout Los Angeles and San Francisco separately; California firms outside of those metro areas were included in "Other West." Other categories exclude those named metropolitan areas.

Private Firm, Equity Partner

Average hourly billing rate in 2020 (Q33)

Private Firm, Equity Partner

		Average hourly billing rate in 2020						
		Number of Individuals	Mean (Average)	10th Percentile 10%	First Quartile 25%	Median (Midpoint)	Third Quartile 75%	90th Percentile 90%
All Individuals		253	\$558	\$344	\$400	\$500	\$650	\$887
Years of IP Law Attorney Experience	7-9	7	\$372	ISD	\$290	\$375	\$401	ISD
	10-14	31	\$545	\$341	\$395	\$480	\$625	\$889
	15-24	89	\$532	\$340	\$398	\$495	\$614	\$757
	25-34	82	\$577	\$377	\$424	\$530	\$680	\$899
	35 or More	36	\$648	\$340	\$450	\$593	\$855	\$1,100
Location	Boston CMSA	6	\$637	ISD	\$464	\$600	\$831	ISD
	NYC CMSA	19	\$712	\$400	\$500	\$600	\$980	\$1,150
	Philadelphia CMSA	6	\$726	ISD	\$528	\$700	\$861	ISD
	Washington, DC CMSA	31	\$633	\$400	\$460	\$525	\$847	\$962
	Other East	12	\$523	\$315	\$385	\$488	\$528	\$1,046
	Metro Southeast	15	\$564	\$358	\$375	\$500	\$590	\$1,026
	Other Southeast	5	\$453	ISD	\$368	\$410	\$559	ISD
	Chicago CMSA	10	\$586	\$329	\$469	\$640	\$700	\$736
	Minne.-St. Paul PMSA	19	\$530	\$295	\$360	\$500	\$675	\$875
	Other Central	56	\$453	\$300	\$368	\$415	\$544	\$665
	Texas	23	\$549	\$339	\$415	\$498	\$700	\$900
	Los Angeles CMSA	14	\$657	\$372	\$443	\$613	\$780	\$1,200
	San Francisco CMSA	5	\$665	ISD	\$463	\$595	\$903	ISD
IP Technical Specialization (≥50%)	Other West	32	\$513	\$308	\$356	\$470	\$613	\$787
	Biotechnology	10	\$569	\$400	\$402	\$473	\$700	\$1,015
	Chemical	7	\$430	ISD	\$350	\$450	\$500	ISD
	Computer Software	27	\$546	\$320	\$375	\$450	\$560	\$1,004
	Electrical	21	\$603	\$302	\$398	\$498	\$838	\$1,073
	Mechanical	51	\$492	\$342	\$380	\$460	\$560	\$700
	Medical/ Health Care	15	\$541	\$298	\$400	\$600	\$685	\$702
Age	Other areas	4	\$481	ISD	\$406	\$463	\$575	ISD
	Younger than 35	4	\$364	ISD	\$305	\$376	\$412	ISD
	35-39	13	\$498	\$366	\$385	\$425	\$553	\$900
	40-44	32	\$513	\$297	\$375	\$450	\$634	\$831
	45-49	29	\$616	\$350	\$400	\$520	\$750	\$1,100
	50-54	48	\$517	\$349	\$400	\$475	\$594	\$710
	55-59	57	\$546	\$350	\$400	\$500	\$617	\$806
Gender	60 or Older	64	\$614	\$308	\$429	\$528	\$748	\$1,100
	Male	208	\$563	\$350	\$400	\$500	\$650	\$903
	Female	32	\$510	\$340	\$381	\$450	\$583	\$735
Highest Non-Law Degree	Prefer not to respond	6	\$500	ISD	\$375	\$475	\$638	ISD
	Bachelor's Degree	187	\$563	\$350	\$401	\$500	\$650	\$879
	Master's Degree	44	\$571	\$300	\$400	\$525	\$700	\$933
Ethnicity	Doctorate Degree	21	\$489	\$261	\$360	\$460	\$613	\$748
	White/Caucasian	200	\$548	\$350	\$400	\$500	\$642	\$873
	Black/African American	3	\$463	ISD	ISD	\$400	ISD	ISD
	Hispanic/Latino	4	\$570	ISD	\$424	\$558	\$729	ISD
	Asian/Pacific Islander	14	\$578	\$340	\$400	\$625	\$716	\$776
	Blended	4	\$681	ISD	\$469	\$600	\$975	ISD
	Prefer not to respond	19	\$612	\$300	\$400	\$510	\$750	\$1,250
	Other	3	\$412	ISD	ISD	\$350	ISD	ISD
Full-time Intellectual Property lawyers and agents in the firm or corporation	1-2	24	\$406	\$284	\$353	\$400	\$500	\$530
	3-5	29	\$441	\$340	\$383	\$420	\$483	\$625
	6-10	28	\$486	\$323	\$400	\$463	\$569	\$713
	11-25	57	\$508	\$340	\$380	\$435	\$598	\$750
	26-50	33	\$585	\$329	\$435	\$525	\$685	\$1,016
	51-100	47	\$686	\$415	\$520	\$600	\$850	\$1,100
	101-150	17	\$606	\$347	\$498	\$600	\$693	\$860
	More than 150	15	\$822	\$441	\$560	\$795	\$1,100	\$1,240

Private Firm, Partner-Track Attorney

Average hourly billing rate in 2020 (Q33)

Private Firm, Partner-Track Attorney

		Average hourly billing rate in 2020						
		Number of Individuals	Mean (Average)	10th Percentile 10%	First Quartile 25%	Median (Midpoint)	Third Quartile 75%	90th Percentile 90%
All Individuals		74	\$432	\$275	\$320	\$390	\$500	\$650
Years of IP Law Attorney Experience	Fewer than 5	13	\$375	\$233	\$263	\$340	\$443	\$676
	5-6	6	\$338	ISD	\$267	\$308	\$421	ISD
	7-9	20	\$446	\$287	\$329	\$390	\$515	\$738
	10-14	19	\$490	\$300	\$320	\$425	\$550	\$950
	15-24	12	\$412	\$308	\$335	\$385	\$450	\$599
Location	Boston CMSA	6	\$540	ISD	\$366	\$508	\$728	ISD
	NYC CMSA	3	\$717	ISD	ISD	\$755	ISD	ISD
	Philadelphia CMSA	3	\$482	ISD	ISD	\$515	ISD	ISD
	Washington, DC CMSA	11	\$424	\$260	\$320	\$421	\$500	\$584
	Other East	4	\$325	ISD	\$284	\$320	\$371	ISD
	Metro Southeast	4	\$413	ISD	\$366	\$410	\$461	ISD
	Other Southeast	5	\$399	ISD	\$311	\$400	\$488	ISD
	Minne.-St. Paul PMSA	7	\$354	ISD	\$285	\$340	\$360	ISD
	Other Central	9	\$324	ISD	\$288	\$325	\$373	ISD
	Texas	6	\$486	ISD	\$354	\$450	\$593	ISD
	San Francisco CMSA	3	\$737	ISD	ISD	\$910	ISD	ISD
	Other West	10	\$376	\$227	\$267	\$350	\$508	\$547
IP Technical Specialization (>=50%)	Chemical	4	\$384	ISD	\$284	\$405	\$463	ISD
	Computer Software	13	\$419	\$240	\$315	\$450	\$503	\$624
	Electrical	7	\$458	ISD	\$300	\$365	\$595	ISD
	Mechanical	13	\$422	\$260	\$305	\$360	\$500	\$816
	Pharmaceutical	4	\$449	ISD	\$273	\$368	\$706	ISD
Age	Younger than 35	13	\$381	\$243	\$263	\$325	\$450	\$684
	35-39	22	\$422	\$240	\$296	\$365	\$456	\$847
	40-44	14	\$546	\$358	\$399	\$488	\$653	\$905
	45-49	12	\$390	\$268	\$320	\$363	\$488	\$514
	50-54	6	\$414	ISD	\$330	\$405	\$511	ISD
	55-59	4	\$397	ISD	\$316	\$393	\$480	ISD
Gender	Male	57	\$450	\$289	\$335	\$400	\$513	\$711
	Female	16	\$373	\$218	\$256	\$330	\$414	\$641
Highest Non-Law Degree	Bachelor's Degree	41	\$433	\$275	\$309	\$395	\$500	\$724
	Master's Degree	15	\$428	\$247	\$310	\$377	\$510	\$784
	Doctorate Degree	17	\$434	\$290	\$333	\$400	\$515	\$638
Ethnicity	White/Caucasian	56	\$419	\$275	\$325	\$383	\$494	\$590
	Black/African American	3	\$497	ISD	ISD	\$400	ISD	ISD
	Asian/Pacific Islander	10	\$520	\$300	\$319	\$463	\$674	\$946
Full-time Intellectual Property lawyers and agents in the firm or corporation	1-2	3	\$265	ISD	ISD	\$275	ISD	ISD
	3-5	5	\$377	ISD	\$293	\$375	\$463	ISD
	6-10	3	\$350	ISD	ISD	\$375	ISD	ISD
	11-25	20	\$377	\$254	\$305	\$364	\$444	\$510
	26-50	12	\$397	\$256	\$300	\$363	\$408	\$808
	51-100	14	\$496	\$275	\$355	\$483	\$546	\$863
	101-150	7	\$428	ISD	\$340	\$380	\$400	ISD
	More than 150	7	\$640	ISD	\$500	\$585	\$810	ISD